IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 459 of 2003

Between:

M/s. Santhosh Wines K.Komaraiah, S/o rajaiah
R/o Vemulavada (V) & (M), Karimanagar Dist.

..... PETITIONER

AND

1 Govt. of A.P. Prl. Secretary
Revenue (Ex.III) Dept., Secretariat,
Hyderabad
2 Prohibition & Excise Superintendent
Karimnagar, Karimnagar Dist.
3 M/s. Kanaka Durga Wines M.Sreenivs, Prop.
Vemulavada, Karimnagar Dist.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a Writ, order or direction, preferably one in the nature of Writ of Mandamus, declaring the impugned proceedings in Proc.No.1335/2002/P&Ex/B3, dt: 10-4-2002 of the 2nd respondnet as illegal, arbitrary and contrary to law

Counsel for the Petitioner:MR.P.BALAMUKUNDA RAO

Counsel for the Respondent No.1 and 2: G.P . for Prohibition &b Excise

Counsel for Respondent No .3. Sri S.Satyam Reddy.

WRIT APPEAL No. 641 of 2002.

Between:

M/s Santhosh Wines, Vemulawada rep. By Sri K.Komuraiah r/o. Vemulawada ….Petitioner

And

1. **Govt. of A.P. rep. By its Special Chief Secretary, Revenue (Excise-III) Dept. Secretariat Buildings, Hyderabad.**
2. **2. Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad.**
3. **3. Deputy Commissioner of Prohibition and Excise, Karimnagar.**
4. **Prohibition and Excise Superintendent, Karimnagar Dist.**
5. **M/s Kanakadurga Wines rep. By its Prop. Sri M.Srinivas.**
6. **M/s Vijayalakshmi Wines, rep. By Mekala Ramesh.**
7. **M/s Sai Wines, rep. By Macherla Ramesh.**
8. **Ms/ Vandana Wines, rep. By Pulla Malesham**
9. **M/s Maharaja Wines, rep. By V.Rajalingam Gound**
10. **M/s Rohit Wines, rep. By Sri P.Rajender.**
11. **M/s Vemulawada No.1 wines, rep. By K.Lakshmana Rao.**
12. **M/s Sri Banara Wines, rep. By Ch. Ramesh.**
13. **M/s Shiva Ramdev Wines, rep. By M.Lakshminarajam.**
14. **M/s Shiva Wines, rep. By N.Shekar. ….Respondents**

This appeal is filed under Sec. 15 of the Letter Petent Appeal against the order in W.P.No. 957 of 2002 dated 21-3-2002 by the learned single Judge of this Court.

This Court made the following common order.

THE HONOURABLE SRI JUSTICE

B.SUDERSHAN REDDY

AND

THE HONOURABLE SRI JUSTICE

K.C. BHANU

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W.A. No. 641 of 2002 and

W.P.No.459 of 2003

Common Judgment: (Per BRSR, J.)

This writ appeal arises out of the order dated 21-3-2002 made in W.P.No. 957 of 2002 by a learned single Judge of this Court, where under the learned single Judge refused to grant any relief to the writ petitioner.

The appellant herein along with respondents 6 to14 filed the writ petition by invoking the extraordinary jurisdiction of this Court under Art. 226 of the Constitution of India with a prayer to issue a writ of Mandamus declaring the impugned G.O.Rt.No. 63 Revenue (Excise III) Department dated 15-1-2002 of the 1st respondent-Government as illegal and contrary to law.

The writ appellant is an IL-24 licence holder and carrying on the business under the name and style of M/s Santhosh Wines, Vemulavada. He has been carrying on the business as per the terms and conditions of the IL-24 licence granted to him by the competent authority. That at the relevant time, the appellant was required to pay yearly rent of Rs.4,30,000/-. The licence was initially granted during the year 1998-1999 and has been renewed from time to time.

The 5th respondent herein has also obtained IL-24 licence to run a Wine shop in the name and style of M/s Kanakadurga Wines, Kodimial under Jagtial Excise Station and Revenue Division, Karimnagar District. It appears that the 5th respondent herein made a representation dated 29-10-2001 to the Hon'ble Chief Minister *inter alia* stating that he has established a wine shop (retail shop) in a private rented house in

the name and style of
M/s Kanakadurga Wines, Kodimial. The extremists have targeted his wine shop and lifted all the stock available in the shop during the month of January, 2001. On account of which he incurred heavy financial loss. That a case was registered by P.S. Kodomial under Sec. 384 of IPC vide FIR No. 4 of 2001 dated 1-2-2001. He has also stated in the said representation that in the month of August, 2001 the Mandal Revenue Office was also blasted by the naxalites and later in the month of October, 2001 the Mandal Praja Parishad Office in Kodimial was also destroyed. It is under those circumstance he stated that it has become impossible for him to carry on the business at Kodimial. On account of the then prevailing conditions including constant threat to his life and property, he sought the indulgence of the Hon'ble Chief Minister to accord permission for shifting of his IL-24 shop from Kodimial to Vemulavada town.

The Government of Andhra Pradesh vide its Memo dated 31-10-2001 required the Commissioner of Prohibition and Excise to submit a detailed report. The Commissioner submitted his detailed report *inter alia* stating that the request of the 5th respondent cannot be considered, as any such permission from the Government enabling the 5th respondent to shift the licenced premises from Kodimial to Vemulavada town would be contrary to Rule 35 (2) of the A.P. IL & FL Rules, 1970 (for short 'the Rules').

The Government having taken the report dated
13-12-2001 of the Commissioner of Prohibition and Excise, issued the impugned G.O.Rt. No.63 dated 15-1-2002 according permission for shifting of wine shop i.e.,
M/s Kanakadurga Wines from Kodimial, Jagitial Excise Station to Vemulavada town of Vemulavada Excise Station, Karimnagar District "as a special case as there was threat from extremists and damaging of the stock in the shop, subject to his paying the shifting fee as well as new licence fee for Vemulavada town."

The appellant as well as respondents 6 to 14 filed the writ petition assailing the legality and correctness of the Governmental order in G.O.Rt.No.63 dated 15-1-2001.

The learned single Judge disposed of the said writ petition leaving it open for both the parties to agitate their grievance if any before the appropriate Forum at the time of renewal of licence. The learned Judge was of the opinion that the Excise year was coming to an end by 31-3-2002 and the objections, as well can be raised at the time of renewal of the licence.

The appellant herein raised objections before the Prohibition and Excise Superintendent requesting him not to issue licence in favour of the 5th respondent. But the same was rejected in view of the impugned order passed by the Government. Hence W.P.No.459 of 2003 was filed by the petitioner questioning the order of Superintendent, Prohibition and Excise, Karimnagar dated 10-4-2002. That is how the writ petition and as well as the writ appeal were required to be heard together.

Sri Balamukunda Rao, learned counsel for the appellant contended that the impugned G.O.Rt.No.63 dated 15-1-2002 suffers from incurable legal infirmity. The submission of the learned counsel is that the impugned G.O. is *ultra vires*. The Government, in law, has no authority to relax Rule 35 (2) of the Rules.

Learned Govt. Pleader for Prohibition and Excise contended that the petitioner has no fundamental right to carry on the trade in liquor and therefore he has no locus standi to challenge the order of the Government where under permission has been accorded to the 5th respondent to shift the licenced shop from Kodimial to Vemulavada town.

In order to consider the said aspect, it is just and necessary to have a look at Rule 35 of the Rules, which reads as follows:

35. Sale permitted at the licence premises only:-

1. The licensee shall sell the liquor only at the premises specified in the licence.

2. No change or alteration of the licensed premises shall be made nor the licensed premises shifted elsewhere without the prior approval of the Commissioner of Prohibition and Excise.

> Provided that in the case of a licensed premises in respect of any I.L. 24 licence shifting from one location to another can be permitted only within the same revenue village or town or Excise Station limits only in the case of Municipal Corporation by levying a fee of Rs.10,000/-.

That a plain reading of Rule 35 (1) and (2) makes it abundantly clear that every licensee is required to sell the liquor only at the premises specified in the licence and at no other place. Sub-rule (2) of Rule 35 couched in mandatory form, which mandates that no change or alteration of the licensed premises shall be made nor the licensed premises be shifted elsewhere until prior approval of the Commissioner of Prohibition and Excise is obtained. The jurisdiction to accord permission to change or alter the licensed premises is conferred upon the Commissioner under the Rules framed by the Government in exercise of the power conferred under
Sec. 72 read with Sec. 9, 11, 12, 13, 14, 15 and 28 of the A.P. Excise Act, 1968. The rules are statutory in nature. Proviso to sub-rule 2 of Rule 35 provides that permission for shifting of any IL-24 licence may be granted by the Commissioner only within the same revenue village or town or Excise Station limits only. The jurisdiction conferred upon the Commissioner itself has been structured to the effect that only in case of shifting from one location to the another can be permitted, provided if such shifting is within the revenue village or town or Excise Station. No jurisdiction or power is conferred upon the Government to interfere with the same.

Admittedly, in the instant case, the licensed premises of the 5th respondent M/s Kanakadurga Wines is situated at Kodimial within the limits of Jagtial Excise Station. That under the orders of the Government, the licensed premises is allowed to be shifted to Vemulavada town of Vemulavada Excise Station. The impugned order passed by the Government is *ex facie* illegal and *ultra vires* Rule 35 (2) of the Rules.

That a plain reading of the impugned G.O. of the Government makes it clear that the Government was also aware that such a course is not permissible in law as long as Rule 35 (2) of the Rules remains in operation. It is for that reason the Government thought it fit to relax the applicability of Rule 35 (2) of the Rules so far as the 5th respondent is concerned. No provision of law either

in the Act or in the Rules is brought to our notice under which the Government could have granted any relaxation in favour of the 5th respondent. In the absence of any specific power conferred either under the provisions of the Act or the Rules, it is not permissible for the Government to grant any exemption or relaxation in favour of any individual or licensee. Such relaxation itself is without any authority in law. That once the subject matter is regulated by any statute and the statutory rules, the Government's executive power shall not be applicable and they cannot make any inroads into the statutory provisions. The power is conferred upon the Commissioner to be exercised only in cases where the licensed premises can be shifted from one location to another within the same revenue village or town or Excise Station limits. No such power is conferred upon the Government to accord any such permission, nor there is any power conferred upon the Government enabling to grant any relaxation from the operation of any provision of the Act and the Rules in respect of any licensee or group of licensees.

The impugned G.O. is in the teeth of Rule 35 (2) of the Rules. It is *ultra vires* and this Court is left with no option but to set aside the same.

We find no substance in the submission made by the learned Govt. Pleader for Prohibition and Excise that the appellant has no locus to file the writ petition. The appellant herein invoked the jurisdiction of this Court complaining of an illegal order passed by the Government, which enable the 5th respondent to shift his IL-24 licenced premises from Kodimial to Vemulavada town where the appellant herein is carrying on his business under the licence granted to him by the competent authority. The appellant is not complaining of violation of any guaranteed fundamental rights, the complaint is that the Government passed orders without any authority in law.

It is needless to observe that not only the licensees but also the State and its Officers and authorities are equally bound by the provisions of the A.P. Excise Act, 1968 and all the Rules framed thereunder.

For the aforesaid reasons, we find it very difficult to sustain the order of the Government in G.O.Rt.No.63 dated 15-1-2002 and the same is accordingly set aside. The writ appeal is accordingly allowed.

Since the whole order of the Prohibition and Excise Superintendent, Karimnagar is based upon the G.O. which we have now set aside, there is no other option except to set aside the order passed by the Superintendent, Prohibition and Excise. The renewal granted in favour of the 5th respondent over-ruling the objections of the appellant is unsustainable in law.

For the aforesaid reasons, both the writ petition and as well as the writ appeal are allowed. The 5th respondent cannot be permitted to carry on any business under IL-24 licence granted to him by the Licensing authority enabling him to run his shop at Vemulavada. He shall be at liberty to carry on his business if he is so advised at Kodimial where he was originally granted IL –24 licence. In case, if the 5th respondent proposes to carry on his business at Kodimial at some other premises other than the one where he was earlier carrying on the business, an appropriate representation can always be made to the Commissioner which shall be considered favourably.

The writ appeal and the writ petition are accordingly allowed without any order as to costs.

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B.Sudershan Reddy, J.

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K.C. Bhanu, J.

18th August, 2004

grr

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday the Eighteenth day of August two thousan and four.

Deputy Regisrar

To

1. The Personal Secretary, Revenue(Excise III) Dept, Secretariat, Hyderabad.
2. The Superintendent Prohibition and Excise Karimnagar, Karimnagar on Duty.
3. The Spl. Chief Secretary, Revenue (Excise-III) Dept, Secretariat Buildings, Hyderabad.
4. The Commission of Prohibition and Excise, AP, Hyderabad.
5. The Superintendent, Prohibition and Excise, Karimnagar District.
6. Two CC copies to Govt. Pleader, Prohibition and Excise, High Court of A.P., Hyderabad.
7. The Deputy commissioner of Prohibition and Excise, Karimnagar.
8. Two CD Copies.